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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re BABY GIRL G., a Person Coming
Under the Juvenile Court Law.

H032897
(Santa Clara County
Super. Ct. No. JD18094)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

G.G.,

Defendant and Appellant.

Appellant Gloria, mother of Gina¹ appeals from a juvenile court order terminating her parental rights pursuant to Welfare and Institutions Code section 366.26.² The Santa Clara County Department of Family and Children's Services (the Department) took Gina into custody when she was a day old because she was born at home in a bathroom and

¹ By separate order issued this day, this court has ordered that appellant mother and the child be referred to by the above listed fictitious names in order to adequately protect their confidentiality.

² All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

tested positive for methamphetamine at birth. Gloria, who had a long history of substance abuse and a criminal record, had not received any prenatal care while pregnant with Gina and admitted to taking drugs while pregnant. Although the Department recommended reunification services for Gloria, Gina's counsel requested bypass of services, arguing it was in the child's best interest. Because Gloria parental rights had previously been terminated and because the court found that she had not made reasonable efforts to remedy the problems that had led to the prior termination of her parental rights, the court ordered no services for Gloria and set a section 366.26 hearing. Gloria failed to appear at the contested hearing and the court terminated her parental rights. This timely appeal ensued.

On appeal, we appointed counsel to represent appellant in this court. Appointed counsel has filed an opening brief which states the case and the facts but raises no specific issues. (*In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*)). In the opening brief, counsel acknowledged that this court has no duty to independently review the record pursuant to *People v. Wende*,³ but requested that we allow appellant the opportunity to submit a brief in propria persona pursuant to *Conservatorship of Ben C.*, (2007) 40 Cal.4th 529, 543, 544 (*Ben C.*).

In *In re Sara H.* (1997) 52 Cal.App.4th 198 (*Sara H.*), analyzing the Supreme Court's reasoning in *Sade C.*, we held that the proper course of action in a juvenile dependency case, where counsel finds no meritorious appellate issue upon scrutiny of the record, is to deem the appeal abandoned and to dismiss it. (*Id.* at pp. 201-202.) We held that we do not have discretion to review the record, under any circumstance. (*Id.* at p. 201.) The two foundational principals underlying the holdings in both *Sara H.* and *Sade C.* are the need for speedy resolutions in dependency cases, and the recognition that independent review of the record causes intolerable delay. (*Ibid.*) Despite these

³ *People v. Wende* (1979) 25 Cal.3d 436.

holdings, appellant's counsel urges us to adopt the procedure articulated in *Ben C.* In *Ben C.* the Supreme Court held that where counsel has filed a no issue brief in a conservatorship proceeding, before dismissing the appeal as abandoned, the appellant should have the opportunity to submit a supplemental letter brief in propria persona. (*Ben C.*, supra, 40 Cal.4th at p. 544, fn. 6.)

Although *Ben C.* was a conservatorship proceeding, the rights implicated in a dependency proceeding are, at least, equally fundamental. Further, in the past, where counsel in a dependency case was preparing to file a "no issue" letter pursuant to *Sade C.*, we have allowed the appellant to file a motion to vacate the appointment of counsel so that they could file a brief in propria persona. We have often granted these motions, recognizing the fundamental nature of the rights at stake in dependency appeals as well as the due process implications of allowing an appellant adequate access to the appellate court.

Realistically, the process of allowing the appellant to file a motion to vacate counsel's appointment and then file a supplemental brief, as we have done in the past, would likely take as long if not longer than directly notifying the appellant that he has the right to file a supplemental brief. Therefore, there is no actual prejudice to the dependent child due to any delay caused by allowing the appellant an opportunity to file a supplemental brief in propria persona. In balancing the due process interests of the appellant with the child's need for expeditious finality, we find that appellant should be afforded an opportunity to file a supplemental letter brief in propria persona.

Based on this conclusion, we notified appellant of her right to submit written argument in her own behalf within 30 days. That period has elapsed and we have received no written argument from her. Respondent requests that we dismiss the appeal.

The appellant having failed to raise any issue on appeal, the appeal must be dismissed as abandoned. (*Ben C.*, supra, 40 Cal.4th 529; *Sade C.*, supra, 13 Cal.4th 952.)

DISPOSITION

The appeal is dismissed as abandoned.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.